

JONES DAY  
222 East 41<sup>st</sup> Street  
New York, NY 10017  
Telephone: (212) 326-3939  
Facsimile: (212) 755-7306  
Michael J. Templeton (MT 8709)  
Ross S. Barr (RB 3685)

and

77 West Wacker  
Chicago, IL 60601  
Telephone: (312) 782-3939  
Facsimile: (312) 782-8585  
Mark A. Cody (*pro hac vice*)  
Robert E. Krebs (*pro hac vice*)

Counsel to South Carolina Electric & Gas Company

**UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

In re:	)	
	)	Chapter 11
	)	
Calpine Corporation, <u>et al.</u> ,	)	Case No. 05-60200 (BRL)
	)	(Jointly Administered)
Debtors.	)	
	)	
<hr/>	)	
Columbia Energy LLC,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Adv. Pro. No. 07-1694
	)	
South Carolina Electric & Gas Company	)	
	)	
Defendant.	)	
<hr/>	)	

**DECLARATION OF HENRY E. DELK, JR. IN SUPPORT  
OF MOTION OF SOUTH CAROLINA ELECTRIC & GAS COMPANY  
TO WITHDRAW THE REFERENCE OF ADVERSARY PROCEEDING**

1. I am Manager of System Control for South Carolina Electric & Gas Company ("SCE&G"). I make this declaration (the "Declaration") in connection with the motion

of South Carolina Electric & Gas Company for the entry of an order withdrawing the reference to the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") of the adversary proceeding captioned Columbia Energy, LLC v. South Carolina Electric & Gas Company, Adv. Proc. No. 07-1694 (the "Adversary Proceeding"). Except as otherwise indicated, all facts set forth herein are based upon my personal knowledge or my review of the relevant documents.

2. On May 8, 2001, SCE&G and Plaintiff Columbia Energy, LLC ("Columbia") entered into the Construction and Maintenance Agreement for Interconnection Facilities (the "C&M Agreement"). The C&M Agreement sets forth the terms and conditions of the interconnection of Columbia's electric generation facilities to SCE&G's electric transmission system. SCE&G entered into separate agreements with Columbia's marketing affiliate, Calpine Energy Services, L.P. ("CES"), for the transmission of power from Columbia's generation facilities on SCE&G's transmission system (the "Transmission Agreements").

3. As required under section 205 of the FPA, on September 29, 2003, SCE&G filed the C&M Agreement with FERC. On October 20, 2003, Columbia filed a motion to intervene and protest in response to SCE&G's filing. In its protest, Columbia requested under FPA section 206 that FERC determine that the allocation of costs in the C&M Agreement were unjust and unreasonable in contravention of the FPA. Columbia further requested that FERC find that certain electric transmission facilities, referred to as the "Narrow U Facilities" or "U Facilities," were not "direct assignment facilities," i.e., transmission facilities necessary to physically and electrically interconnect Columbia's generation facilities to SCE&G's transmission system (such that the facilities' cost should be directly assigned to Columbia), but rather that the "Narrow U Facilities" constituted "network upgrades" subject to the FERC policy

requiring SCE&G to issue transmission credits up to the level of the facilities' cost. Columbia's protest requested that finding, notwithstanding the fact that, in the C&M Agreement, Columbia had agreed to the classification of such facilities as direct assignment facilities without any provision for the issuance of transmission credits.

4. By order issued March 22, 2004 (the "March 2004 Order"), FERC determined that the "Narrow U Facilities" are "network upgrades and their cost must be repaid over time to Columbia by SCE&G by granting Columbia credits against the transmission rates paid by Columbia to SCE&G." Pursuant to that order, SCE&G filed a revised version of the C&M Agreement that added Section 7.2.1 to provide for such credits. A copy of the March 2004 Order is attached hereto as Exhibit A.

5. Pursuant to the March 2004 Order and the revised C&M Agreement, in June 2004, SCE&G began applying credits to CES' monthly invoices for charges incurred for transmission service from Columbia's generating facilities. SCE&G applied these transmission credits in this manner with the full knowledge of both Columbia and CES, and neither challenged this crediting practice until over two years later – after the entities had filed voluntary petitions commencing their respective reorganization cases under chapter 11 of the Bankruptcy Code and the credits had been fully applied. At no time while SCE&G applied these transmission credits to each monthly invoice pursuant to the March 2004 Order did Columbia or CES suggest to SCE&G that CES was paying too little for transmission service – i.e., that SCE&G should cease its application of transmission credits to CES' transmission invoices.

6. By order issued March 7, 2007 (the "March 2007 Order") FERC directed SCE&G to make certain modifications to section 7.2.1 of the C&M Agreement and "to file, within 30 days of the date of [the March 2007 Order], revised [agreements] reflecting the

modifications discussed in the body of [the March 2007 Order]." A copy of the March 2007 Order is attached hereto as Exhibit B.

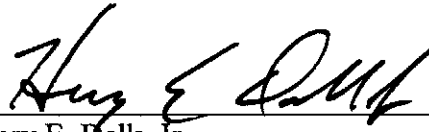
7. On April 6, 2007, SCE&G submitted a filing to FERC in response to FERC's directives set forth in the March 2007 Order (the "Compliance Filing"). In the Compliance Filing, SCE&G notified FERC of its position that it had fully complied with FERC's directive to issue transmission credits by crediting CES' transmission charges under the Transmission Agreements. A copy of the Compliance Filing is attached hereto as Exhibit C.

8. Columbia is a generation-owning subsidiary of the Calpine Corporation. In the Stipulation and Consent Agreement between the FERC's Office of Enforcement and CES, dated April 18, 2007 (the "Stipulation and Consent Agreement"), CES stipulates that "CES was formed in 2000 for the purpose of consolidating the Calpine Companies' natural gas and power marketing activities into a single subsidiary." A copy of the Stipulation and Consent Agreement is attached hereto as Exhibit D. Columbia further states in a March 16, 2006 filing with the FERC, that "Columbia sells the Columbia Facility's electric output to CES." A copy of the March 16, 2006 filing is attached hereto as Exhibit E. Columbia, further alleges in its Complaint for Turnover of Property, Damages, and Declaratory Relief, filed on April 30, 2007 (the "Complaint"), that "CES coordinates the sale of electricity and electricity transmission services for . . . the Columbia generating facility." A copy of the Complaint is attached hereto as Exhibit F.

9. As of the date of the Motion, FERC has not entered an order determining whether SCE&G's application of transmission credits to CES as described in the Compliance Filing complies with the March 2004 Order and the revised C&M Agreement.

I declare under the penalty of perjury that the foregoing is true and correct.

Executed on May 31, 2007.

  
Henry E. Delk, Jr.